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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

YOSAYA JOHNSON TRIPLETT,

Defendant and Appellant.

B298914

(Los Angeles County
Super. Ct. No. BA461402)

APPEAL from the judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed as modified.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Idan Ivri and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of the Discussion *post*, parts A., B., and D.

A jury convicted defendant Yosaya Johnson Triplett of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)),¹ carjacking (§ 215, subd. (a)), and attempted murder (§§ 211, subd. (a), 664). The jury also found true allegations that defendant personally inflicted great bodily injury in the commission of the assault and attempted murder. (§ 12022.7, subd. (a).) The court sentenced defendant to a prison term of 11 years 8 months.

During jury deliberations, the court denied the jury's request for transcripts of testimony of certain witnesses and defense counsel's request to inform the jurors that they could have the testimony read back to them. In the published portion of this opinion, we hold that the court erred by denying defense counsel's request. We further hold that, under the circumstances in this case, the error was harmless.

In the unpublished portion of this opinion, we reject defendant's contentions that the trial court erred in denying his *Wheeler/Batson*² motion during jury selection and that the evidence was insufficient to support the attempted murder conviction. We also agree with defendant that a clerical error in a sentencing minute order must be corrected, and agree with the People that the defendant's sentence must be corrected to include certain assessments.

We affirm the judgment as modified to correct the sentence.

¹ Subsequent statutory references are to the Penal Code.

² *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*); *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*).

FACTUAL AND PROCEDURAL SUMMARY

A. *Prosecution Evidence*

In September 2017, defendant was living with her boyfriend, Donnie Faizon, at the home of Faizon's uncle, Russell Allen. On the evening of September 8, 2017, while defendant was working at a nightclub, Dalilah Young visited with Allen and Faizon at Allen's home.

Young testified that she left Allen's home at 11:30 p.m. and crossed the street to her car. A truck or sports utility vehicle pulled up close to her car. As Young got into her car and put her key into the ignition, defendant got out of the other vehicle, walked to Young's car, and pulled the car door open. When Young stepped out of the car, defendant stabbed Young in the head with a knife with a two-inch blade.

Young "fought back" in "[s]elf-defense." During the fight, defendant stabbed Young repeatedly, inflicting wounds in Young's temple, cheek, wrist, neck, and the side of her torso. Defendant grabbed Young's phone from her car and threw it into the street. Defendant then began to choke Young, and told her, "Look at you bitch. Fittin' to die bleeding and shit."

Defendant got in the driver's seat of Young's car and drove forward and backward, hitting parked cars. When Young grabbed the driver's car door, defendant drove forward, causing Young to hit the ground. Defendant then drove away in Young's car.

Young returned to Allen's residence and Allen called 911.

Young was hospitalized for a week as a result of the injuries she suffered in the assault. Lacerations from the eight stab wounds varied in length from one-third of an inch to three

inches. One cut pierced Young's lung and could have been fatal if untreated. The other lacerations were superficial.

Young's car was located five months later in a parking lot, vandalized and damaged.

B. *Defense Evidence*

Defendant testified that on the night of the incident her grandfather picked her up from the nightclub where she worked. As they pulled up to Allen's home, Young opened the car door, pulled defendant out by her hair, and began beating her. Defendant pulled a knife from her waistband and stabbed Young to defend herself. Defendant then ran upstairs and told Allen to call an ambulance because she had stabbed "this girl outside." Defendant waited for the ambulance, then left with her grandfather, who took her to her mother's home and then to a motel.

Defendant explained that she keeps the knife with her because she carries large amounts of cash when she comes home from her work at a nightclub and she lives in a "rough" area. She denied that she threw Young's phone or took her car.

DISCUSSION

A. Denial of Defendant's Wheeler/Batson Motion

Defendant contends that the trial court erred in denying her *Wheeler/Batson* motion with respect to the prosecutor's peremptory challenges of two prospective female African-American jurors. We disagree.

The following additional facts are relevant to this inquiry.

Defendant is an African-American woman who was 20 years old at the time of trial. Young is African-American and was 21 years old at the time of trial. The jury venire consisted of 40 people, three of whom were African-American. Each African-American was female. The trial court excused one of the three for cause before jury selection began. The remaining African-American jurors were designated Juror No. 7 and Juror No. 16.

During voir dire, the prosecutor asked the prospective jurors: "Just by looking at [the defendant] here, is there anyone else who thinks they might not be a fair juror because they can't imagine her committing an assault with a deadly weapon, carjacking? Is there anyone who looks at her and can't imagine she would have done that and can't be fair to the prosecution?"

Juror No. 7 responded: "You are saying for me to agree that she didn't do it by looking at her? I don't think she would put her life—I don't think she did it."

The prosecutor then asked Juror No. 7: "[I]f I call witnesses and I prove my case beyond a reasonable doubt, would you be able to convict, or would this idea just by looking at her that you can't imagine her doing these things, would that prevent you from convicting?" Juror No. 7 responded: "I haven't heard anything. I can't answer that."

Juror No. 16 informed the court during voir dire that she had brothers who had been charged with crimes similar to those charged against defendant. She also had a cousin who had been murdered five or six years earlier, and the police investigation is “still going on.”

In response to the question, “do you know anybody who has been treated badly by the police or the courts,” Juror No. 16 answered: “Yes. Just growing up in L.A.” When asked about this comment, she explained: “A black woman in L.A. with young black brothers, I have been harassed many times” by officers.

Juror No. 16 said there was nothing about these experiences that would impact her ability to evaluate police testimony or to be fair in this case.

The prosecutor used two of his first four peremptory challenges to dismiss Juror No. 7 and Juror No. 16. Defense counsel then made a *Wheeler/Batson* motion.

The trial court found that the defense had established a prima facie case of impermissible group bias and prompted the prosecutor to state his reasons for excusing the jurors.

The prosecutor stated the following regarding Juror No. 7: The juror “indicated she grew up in Los Angeles in the Inglewood area and lived there her entire life. She was single, worked retail, had not been a member of a jury, and had not been a victim of a crime. [¶] Upon more questioning, she expressed she lived in Inglewood her entire life—which is similar and close to the area of where this crime occurred in South Los Angeles. [¶] She appeared to me to be a little young. I asked questions about what her life experience would be. She works at the Los Angeles airport working retail. When I asked her what retail, she said normal convenience items. It is a place she would run into

people. Not in a managerial position or a judgment position. [¶] She seemed to be inexperienced to me. She did not attend any college or advanced education after high school. I don't know if the court noticed, yesterday afternoon she was chewing gum during the duration of the jury instruction. That, to me, indicated some immaturity and disrespect for the court proceedings. [¶] She also . . . said that it was difficult to believe the defendant had committed this crime, assault with a deadly weapon and attempted murder, just based on her looks and her sitting here. [¶] I understand the court denied the People's motion to strike that juror for cause, but I think her feelings about the defendant being here and being charged with the crime might make her unfair to the People."

Regarding Juror No. 16, the prosecutor stated the following: "Juror number 16 indicated she lived in Leimert Park. I believe she grew up in West L.A., married with no kids, a registered nurse working in the emergency room. She does have a managerial position and has been a charge nurse before. She has not been a victim of a crime and has never served on a jury. [¶] She said she had some relatives that were officers. She grabbed my attention when she said some of her brothers had been charged with similar crimes. That alone made me think I may not want her on the jury. [¶] I tend to like jurors who have not been a member of a jury at all. When my witnesses testify, I want them to see testimony for the first time ever. [¶] She said she had not talked to her brothers about the court cases or how they turned out. I think she indicated to us the reason—or she could be fair because she had no idea whether they were treated fairly or not. [¶] To me, simply the fact that her brothers have been charged with assault with a deadly weapon and attempted

murder is one factor in the back of her mind when she listens to how our officers have investigated this case and whether or not the defendant is guilty in our case.”

The prosecutor further stated: “What really concerned the People was her answer to the court’s question to number 16. There are many people who have grown up in L.A. and may feel like they could be fair, could not be fair, based on their experience. Perhaps I haven’t practiced here long enough. I never heard a juror say as a response[,] ‘I can’t be fair just growing up in L.A.’ [¶] I understand what she means. When I asked her, she clarified saying she is a black female. She has been harassed. It sounds like she has seen both the good and bad of society in general. In addition, her cousin was murdered. Apparently, that investigation is still ongoing. [¶] She may be a fair juror. I am not convinced of that mostly because of her answer, ‘just growing up in L.A.’ she might not be fair. Her brothers were charged with similar crimes. That is the bulk of the reason. [¶] In addition to that, although it is a smaller reason, great bodily injury is an issue in our case. I know we do have other nurses. Those nurses do not work in the emergency room. This juror is in a position to see injuries that are more like what we are going to see in our case relative to the other nurse who works in the ICU or a nurse who works in surgery, which is less of an emergency situation.”

The court then denied the defense *Wheeler/Batson* motion, stating: “As to Juror [No.] 7, the one issue that stands out to me, Juror [No.] 7 indicated she didn’t think the defendant looked like a person who could be guilty in this case. In my judgment, that is a very valid race neutral position. [¶] As to [Juror No.] 16, as the People pointed out, just living in Los Angeles, she would

have bias against police officer testimony. She also indicated she had brothers charged with a similar crime and a cousin who was murdered. In my view, those are also very valid race neutral reasons. [¶] For those reasons, the People have established race neutral reasons for the exclusion of both jurors, [Juror No.] 7 and Juror [No.] 16.”

Under *Wheeler, supra*, 22 Cal.3d 258 and *Batson, supra*, 476 U.S. 79, the use of peremptory challenges to remove prospective jurors solely on the basis of a group bias, such as race or ethnicity, violates our state and federal constitutions. (*People v. Rhoades* (2019) 8 Cal.5th 393, 423.) In evaluating a *Wheeler/Batson* motion, the trial court engages in a three-step inquiry: First, the objecting party must make a prima facie showing of prohibited group bias; second, the burden shifts to the party who exercised the peremptory challenge to give a nondiscriminatory reason; and third, the trial court evaluates the proffered reasons and determines whether the objecting party has proven purposeful discrimination. (*People v. Silva* (2001) 25 Cal.4th 345, 384; *Purkett v. Elem* (1995) 514 U.S. 765, 767.) “The ultimate burden of persuasion regarding [discriminatory] motivation rests with, and never shifts from, the opponent of the [peremptory challenge].” (*People v. Lenix* (2008) 44 Cal.4th 602, 612–613 (*Lenix*).

Here, the court found that defendant made a prima facie showing of discrimination and defendant does not dispute that the prosecutor proffered nondiscriminatory reasons for excusing Jurors No. 7 and No. 16. Defendant’s challenge is to the court’s third-step determination that the prosecutor’s reasons for dismissing the two African-American women were race neutral.

At the third step, “ ‘the issue comes down to whether the trial court finds the prosecutor’s race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor’s demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.’ [Citation.] In assessing credibility, the court draws upon its contemporaneous observations of the voir dire.” (*Lenix, supra*, 44 Cal.4th at p. 613, fn. omitted.)

“Review of a trial court’s denial of a *Wheeler/Batson* motion is deferential, examining only whether substantial evidence supports its conclusions. [Citation.] ‘We review a trial court’s determination regarding the sufficiency of a prosecutor’s justifications for exercising peremptory challenges “ ‘with great restraint.’ ” [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court’s ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.’ ” (*Lenix, supra*, 44 Cal.4th at pp. 613–614.)

The court’s conclusion that the prosecutor provided a race-neutral reason for excluding Juror No. 7 is supported by the record. The prosecutor stated, among other reasons, that he excused Juror No. 7 because the juror indicated it was difficult for her “to believe the defendant had committed this crime, assault with a deadly weapon and attempted murder, just based on her looks and her sitting here.” The reason is patently race neutral and the court’s determination of its validity is supported

by the prosecutor’s question to the prospective jury panel—“[i]s there anyone who looks at [the defendant] and can’t imagine she would have done that”—and Juror No. 7’s response: “I don’t think she did it.” It is certainly permissible for a prosecutor to excuse a juror who does not think the defendant “did it” based on the mere appearance of the defendant.

Defendant contends that the particular reason the court found credible should have been rejected because it was part of a “laundry list” of reasons the prosecutor offered. As our Supreme Court has explained, a prosecutor who employs the “‘laundry list’ approach” at the second step of a *Wheeler/Batson* motion by “positing of multiple reasons, some of which, upon examination, prove implausible or unsupported by the facts, can in some circumstances fatally impair the prosecutor’s credibility.” (*People v. Smith* (2018) 4 Cal.5th 1134, 1157–1158.) Trial courts should therefore “attempt to evaluate the attorney’s statement of reasons as a whole rather than focus exclusively on one or two of the reasons offered.” (*Id.* at p. 1158.) The court is not, however, required “to make detailed comments on every [stated] reason.” (*Ibid.*) “This is particularly true where the prosecutor’s race-neutral reason for exercising a peremptory challenge is based on the prospective juror’s demeanor, or similar intangible factors, while in the courtroom.” (*People v. Reynoso* (2003) 31 Cal.4th 903, 919.)

Here, in addition to Juror No. 7’s statement that she did not “think [the defendant] did it,” the prosecutor pointed to facts disclosed during voir dire that the juror lived near the location of the crime, was young and lacked life experience, and displayed immaturity and disrespect to the court by chewing gum during voir dire. Defendant has not explained how any of these

additional reasons are implausible or factually unsupported, and the absence of express findings by the court on each reason does not require reversal.

Regarding Juror No. 16, the court, apparently based on its own observations during voir dire, agreed with the prosecutor that the juror indicated a bias against police officer testimony “just living in Los Angeles.” The court also commented on the fact that the juror has two brothers charged with similar crimes. Both of these reasons, the court concluded, are “very valid race neutral reasons.” The reasons are race neutral and supported by the record. Juror No. 16 stated that she had “brothers” who had been charged with crimes similar to the charged crimes in this case. She further stated that she knows people who have been treated badly by the police or courts, and that she has been harassed many times as a Black woman with two young Black brothers. The prosecutor can reasonably infer that a juror with such experiences may be biased against police officers who testify for the prosecution.

Defendant points out that Juror No. 16 said she has a cousin and a brother who work in law enforcement and could be fair despite her and her brothers’ experiences with police officers. As our Supreme Court has explained, however, “[t]he fact that the *objector* thinks his opponent should feel comfortable with the candidate is not the relevant question. The question is whether the advocate *exercising the challenge* had an honest and racially neutral reason for doing so.” (*People v. Hensley* (2014) 59 Cal.4th 788, 803.) The trial court found that the prosecutor had such a reason, and the reason is supported by the record.

Defendant also asserts that another person who was ultimately selected to be on the jury and was not African-American, was a nurse, as was Juror No. 16, and whose father had been charged with assault on a police officer. The father's crime and trial took place before the juror was born, and he had never been told "any bad stories" of the government or the police. Significantly, the other juror did not report that he or she had been harassed or had known anyone who had been treated badly by police. Because the two jurors are materially dissimilar, we reject the defendant's argument.

For the foregoing reasons, defendant has failed to show that the trial court erred in denying her *Wheeler/Batson* motion.

B. *Sufficiency of the Evidence of Attempted Murder*

Defendant contends that the evidence is insufficient to support the jury's verdict of attempted murder. More particularly, defendant argues that there is no substantial evidence that defendant acted with the intent to kill Young. We disagree.

"Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing." (*People v. Lee* (2003) 31 Cal.4th 613, 623.) "Because direct evidence of a defendant's intent rarely exists, intent may be inferred from the circumstances of the crime and the defendant's acts." (*People v. Sánchez* (2016) 63 Cal.4th 411, 457.)

When a defendant challenges the sufficiency of the evidence to support a judgment, "we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is

reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Stanley* (1995) 10 Cal.4th 764, 792–793.)

“[S]ubstantial evidence encompasses circumstantial evidence and any reasonable inferences to be drawn from such evidence.” (*People v. Lopez* (2013) 56 Cal.4th 1028, 1070.)

A jury could reasonably conclude from the evidence that defendant intended to kill Young. Although defendant’s knife was relatively small, the location of the stabs—to the head, neck, and torso—were vulnerable areas; even a knife with a two-inch blade could have caused Young’s death. In addition to the multiple stabbings in vulnerable areas, defendant told Young as she choked her that Young was “[f]ittin’ to die bleeding,” then left her alone in the street as she fled. Rational jurors could conclude that these acts, viewed in their entirety, established defendant’s intent to kill beyond a reasonable doubt.

Defendant contends that the evidence is insufficient to support the jury’s finding of intent to kill because the evidence “established the knife and the frenzied stabbings were a completely unplanned reaction to the highly-emotional situation created when appellant saw [Young] leaving the home of [defendant’s] boyfriend Faizon.” The fact that defendant carried a knife into the fight, she argues, does not justify a finding of intent to kill because she was armed “for defensive purposes.” The incident, she concludes, was merely “a physical altercation between two young women and once the first punch was thrown it escalated to the point where [defendant] found it necessary to jab at [Young] with a small knife.” The argument is based on a view of the evidence favorable to the defense, contrary to our standard of review. When, as here, “the circumstances

reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.'” (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 162.)

Defendant further asserts that “it was significant that during deliberations the jury asked the trial court for a clearer definition of ‘intent’ in regard to attempted murder.” Defendant also refers us to the fact that the jury requested defendant’s and Young’s testimony as an indication that the jury “struggle[d] over the ‘intent’ element.” Although the jury’s question and request may suggest that the jury had difficulty making its finding of intent, our task is limited to determining whether there is substantial evidence to support the finding it ultimately made, and here there was.

C. *Jury’s Request for Trial Transcripts*

During jury deliberations, the jury asked the court for “transcripts of witnesses: D[a]lilah Young and Yosaya Johnson Triplett.” (Capitalization omitted.) The court informed counsel that it intended to respond by informing the jury: “If you have a specific question about witness testimony, ask the question. The jury will not receive transcripts of testimony.”

Defense counsel did not object to the denial of transcripts as such, but asked if “the court [would] let them know they could have readback.” The court stated that doing so would be “verging on [in]vading the jury’s province.” The jurors had been instructed under CALCRIM Nos. 202 and 222 that they “are entitled to have readback of testimony,” the court noted, and “it would be inviting error to tell them they can ask for

readback, as they have been instructed as to that in two prior jury instructions.”³

After some colloquy among the court and counsel, the court stated: “I am going to make a ruling[.] I am going to give the jury the note that I intended. The jury, in my view, has been instructed they are entitled to readback. If they want readback they can simply ask for it.” The court then responded to the jury, stating: “If you a [*sic*] specific question about witness testimony ask the question. The jury will not receive transcripts of testimony.” The court submitted this response to the jury at 10:50 a.m. on the second day of deliberations. The jurors asked no further questions of the court and, at 11:37 a.m., the jury informed the court that it had reached a verdict.

On appeal, defendant argues that the court should have either provided the jury with the requested testimony via readback or reminded the jury to consult the instructions given under CALCRIM Nos. 202 and 222—which informed the jurors that they could request a readback of trial testimony.

Both sides point to section 1138 as the statutory authority governing the issue. That section provides: “After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on

³ The court had given the following two instructions relevant to this issue: “‘If there is a disagreement about the testimony at trial, you may ask that the court reporter’s record be read to you’ ”; and “‘The court reporter has made a record of everything that was said during the trial. If you decide that it is necessary, you may ask that the court reporter’s [*sic*] be read to you. You must accept the court reporter’s record as accurate.’ ” (See CALCRIM Nos. 202 & 222.)

any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called.”⁴ (§ 1138.) Our Supreme Court has held that section 1138 requires the trial court to “ “satisfy requests by the jury for rereading of testimony.” ’ ” (*People v. Cox* (2003) 30 Cal.4th 916, 968 (*Cox*), disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22 (*Doolin*)).⁵

As the People point out, the jurors did not request a *rereading* of testimony; they asked for the *transcripts* of the testimony. Defendant interprets the request more broadly— “Yes, the jury used the term ‘transcripts’ but the record makes clear the jury wanted to consider the testimony again. It wanted to ‘know the words’ of the two most important witnesses, [defendant] and the alleged victim.” We agree with defendant. There is no conceivable purpose for requesting the transcripts other than to review and consider the words the witnesses spoke. (See *James v. Key System Transit Lines* (1954) 125 Cal.App.2d 278, 283 [only reasonable interpretation of jury’s request for transcript during deliberations was that jury sought a

⁴ Although the statute’s text indicates that a “disagreement” among the jurors is a prerequisite to the right provided by the statute, jurors have the right to have testimony read to them even without a showing of disagreement. (*People v. Butler* (1975) 47 Cal.App.3d 273, 280 (*Butler*)).

⁵ Defendant does not contend that the court erred by refusing to provide the requested transcripts of testimony to the jury. We do not, therefore, express any view on that question.

reading of the transcript]; accord, *Smith v. Shankman* (1962) 208 Cal.App.2d 177, 184; *People v. York* (1969) 272 Cal.App.2d 463, 465 (*York*.)

In *Smith v. Shankman*, *supra*, 208 Cal.App.2d 177, the jury asked a court bailiff during deliberations for the transcript of the defendant's testimony. (*Id.* at p. 181.) The bailiff informed them they could not have it. (*Ibid.*) This was error because the bailiff was not permitted to communicate with the jurors on a matter other than to determine whether they had reached a verdict. (*Id.* at p. 184.) Relevant here is the court's discussion of prejudice. "Although it is true," the court explained, "that the bailiff was technically correct in instructing the jurors that the written transcript itself could not be given to them, it does not follow that his misconduct was of no consequence. 'While the jury's action did not constitute in so many words a request for a reading of some portion of the transcript, such action can reasonably be interpreted only as such a request. . . .' [Citation.] Had the bailiff properly deferred action on the jury's request until the trial judge had returned . . . , the jury could then have been brought into open court . . . and the judge could have inquired whether they desired to have portions of the relevant testimony reread. As a result of the bailiff's failure to follow this procedure, the jury's request for the transcript was denied in such a manner as to indicate that there was no alternative method by which they could review testimony which they obviously considered important." (*Ibid.*) If, however, the court had been informed of the request and "offered to have the relevant testimony reread to the jury, it is entirely possible, as a practical matter, that its verdict might have been affected." (*Id.* at p. 185.) *Smith's*

reasoning was adopted and applied under similar facts in a criminal case in *York, supra*, 272 Cal.App.2d at pages 465–466.

Neither side has referred us to any California decision factually on point. The Supreme Court of Florida, however, addressed the issue under similar circumstances in *Hazuri v. State* (Fla. 2012) 91 So.3d 836 (*Hazuri*). In that case, the jury asked the trial court if “‘they get transcripts from the trial.’” (*Id.* at p. 839.) Defense counsel requested the trial court “‘advise them that they have a right to have the transcript read back.’” (*Ibid.*) The court rejected the request, stating: “‘Certainly portions of the record could be read, however, I do believe that the accurate and correct response is that they must rely on their own collective recollection of the evidence and we will answer the question that way.’” (*Ibid.*) The jury returned a guilty verdict, and the Florida Supreme Court reversed.

The *Hazuri* court held that “when a jury requests trial transcripts, the trial judge should deny the request, but inform the jury of the possibility of a read-back.” (*Hazuri, supra*, 91 So.3d at p. 846.) The court explained that “a jury cannot properly fulfill its constitutionally mandated role [as factfinder] if it cannot recall or is confused about the testimony presented in a case. Thus, in order to assist the jury in completing its fact-finding mission, trial courts should apply a liberal construction to a jury’s request for transcripts. In other words, a jury’s request for transcripts of testimony should prompt a judge to inform the jury of the potential availability of a read-back of testimony.” (*Id.* at p. 845.) “Whether a jury asks for transcripts of witness testimony or rather uses the term ‘read-back,’” the court continued, “it is clear that the jury is requesting a review of trial testimony. A jury is composed of

laypersons often unfamiliar with legal terms of art, and there should be no magic words required for a read-back request, especially when the intent of the jury's request for transcripts is clear. Failing to require further instruction concerning a read-back after a jury has requested transcripts leaves the jury without the means to refresh its memory of witness testimony—testimony that could be critical to the outcome of the verdict.” (*Ibid.*, fn. omitted.) We find this reasoning persuasive and hold that the court in this case erred in construing the jury's request narrowly as a request for transcripts—not a request for a readback of testimony—and in failing to inform or remind the jury of their right to a readback of testimony.

This error requires reversal only if prejudice is shown. (*People v. Frye* (1998) 18 Cal.4th 894, 1007 (*Frye*), disapproved on another ground in *Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22; *People v. Litteral* (1978) 79 Cal.App.3d 790, 797.) Although defendant contends that “the error is of federal constitutional dimension,” our Supreme Court has held that errors in the readback requirement are errors of state law that do not implicate federal constitutional rights. (See, e.g., *Cox*, *supra*, 30 Cal.4th at p. 968; accord, *People v. Lucas* (2014) 60 Cal.4th 153, 301 (*Lucas*), disapproved on another ground in *People v. Romero and Self* (2015) 62 Cal.4th 1, 53–54, fn. 19.) Because the error is a violation of state law, prejudice is determined under the *Watson* standard. (*People v. Box* (2000) 23 Cal.4th 1153, 1214, disapproved on another ground in *People v. Martinez* (2010) 47 Cal.4th 911, 948, fn. 10; *People v. Roberts* (1992) 2 Cal.4th 271, 326 (*Roberts*); *People v. Ainsworth* (1988) 45 Cal.3d 984, 1020 (*Ainsworth*)). Under that standard, we will reverse the judgment only if, after an examination of the entire cause, it is reasonably

probable that defendant would have obtained a more favorable result in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836–837 (*Watson*)).) The defendant has the burden of demonstrating prejudice under this standard. (*Roberts, supra*, 2 Cal.4th at p. 326; *Lucas, supra*, 60 Cal.4th at p. 263.)

Whether the denial of a readback of testimony is prejudicial depends upon the circumstances of the particular case. (*Butler, supra*, 47 Cal.App.3d at p. 284.) In evaluating prejudice, courts have considered juror communications regarding the reason for the readback request (see *id.* at pp. 277–279, 284) and the reviewing court’s own evaluation of the testimony (see *Frye, supra*, 18 Cal.4th at p. 1008, *Ainsworth, supra*, 45 Cal.3d at p. 1020).

Here, defendant points out that “the testimony requested was that of the key witnesses in the case”—Young and defendant—and argues that the refusal to read back their testimony “affected the outcome and verdict, and as such, it is reasonably probable that a result more favorable to appellant would have occurred had the requested testimony been reread.” The argument, however, is conclusory and asserted without citation to the record or evaluation of the evidence adduced at trial. Even were we to consider the entirety of the testimony of both witnesses, defendant has failed to show that the outcome at trial would have been different given the utter implausibility of defendant’s testimony.

Although defendant testified that her multiple stabbings of Young were in self-defense, her explanation is implausible. Defendant’s uncorroborated testimony implies that Young was lying in wait for defendant to arrive home and decided to assault defendant, without a weapon, in the presence of defendant’s

grandfather. After the assault, defendant remained in the area while police and paramedics tended to Young, but she never reported Young's alleged assault of her, preferring, she explained, to wait until the police came to her one or two weeks later. Although she was living at Allen's home with Faizon at the time, she left the scene that night to go, eventually, to a motel. Such behavior is inconsistent with being the victim of an assault and supports Young's version that defendant was the aggressor. Young's testimony, by contrast, provided a coherent and plausible narrative of events that was consistent with the prosecution's theory that defendant attacked Young in a fit of jealous rage upon seeing Young leaving her boyfriend's home.

In short, whatever the jury's disagreement or confusion prompting it to request the transcript, a readback of the testimony would only have made obvious the porous quality of defendant's defense and confirmed Young's testimony that defendant was the aggressor. Stated differently, after reviewing the transcripts as part of our "examination of the entire cause" (*Watson, supra*, 46 Cal.2d at p. 836), we are of the opinion that if the testimony had been read to the jury, it is not reasonably probable the result would have been more favorable to the defendant. The error, therefore, was not prejudicial.

Defendant relies on *Butler, supra*, 47 Cal.App.3d 273, in which the Court of Appeal held that an erroneous denial of a jury's request to reread the testimony of five witnesses was prejudicial. Significantly, the jury foreman in that case, in making the request for the readback, explained that "[s]ome of [the testimony] was so faint we couldn't really hear it correctly, clear." (*Id.* at p. 278.) The trial court denied the request and directed the jurors to "do your very best to arrive at a verdict

based on the information that you have’ ” (*id.* at p. 279, italics omitted)—a direction the Court of Appeal described as amounting to “jury coercion” (*id.* at p. 283). Under these circumstances, the Court of Appeal held that the error was prejudicial because “the outright refusal of the jury’s request committed the jury to the questionable task of reaching its decisions on the basis of incomplete evidence imperfectly heard.” (*Id.* at p. 284.)

Here, by contrast, our record does not reveal what prompted the jury’s request for transcripts and there is no reason to believe that any juror was unable to hear or understand the testimony during trial. Moreover, in denying the request for transcripts, the court in this case informed the jurors that they could ask any specific question they had about witness testimony. The fact that no question was thereafter posed implies that whatever prompted the request for transcripts was either resolved or ultimately unnecessary to the jury’s decision.

Defendant also asserts that the People “cannot establish the error was harmless.” As stated above, however, errors in failing to comply with section 1138’s readback requirement are errors of state law for which defendant must demonstrate prejudice. (See *Ainsworth, supra*, 45 Cal.3d at p. 1020.) Defendant has failed to do so here.

D. *Correction of Minute Order and Imposition of Assessments*

The jury found not true the enhancement allegation that, in the commission of the carjacking, defendant personally inflicted great bodily injury upon Young within the meaning of section 12022.7. A minute order reflecting the verdicts, however, incorrectly states that the jury found that allegation

true. Defendant requests that we direct the court to correct the clerical error. The People agree. We will so direct.

The court imposed a single court facilities assessment of \$30, pursuant to Government Code section 70373, subdivision (a)(1), and a single court operations assessment of \$40, pursuant to section 1465.8, subdivision (a)(1). The People contend, and defendant does not dispute, that the court was required to impose these fees for each of the three felonies of which defendant was convicted and that the sentence must be corrected accordingly. We agree. (See *People v. Hicks* (2019) 40 Cal.App.5th 320, 324; *People v. Roa* (2009) 171 Cal.App.4th 1175, 1181.)

DISPOSITION

The court shall issue a minute order correcting nunc pro tunc to April 18, 2019, the minute order issued that date to reflect the jury's not true finding as to the allegation that the defendant personally inflicted great bodily injury upon Young in the commission of the carjacking charged in count 2 of the information.

The judgment is modified such that a \$30 court facilities assessment, pursuant to Government Code section 70373, subdivision (a)(1), and a \$40 court operations assessment, pursuant to Penal Code section 1465.8, subdivision (a)(1), is imposed as to each of the three counts of which defendant stands convicted. The court shall issue a minute order reflecting this modification, amend the abstract of judgment accordingly, and send a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

As modified, the judgment is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.